HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.18206 OF 2006

Between:

Mr. Sheikh Yezdani
. . .Petitioner

AND

The State of Andhra Pradesh and others
. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Shri A.Narasimha Rao

Counsel for Respondent No.2 : Shri S.Nageshwara Reddy

13th November, 2006

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PER G.S.SINGHVI, CJ

In this petition filed in the name of public interest litigation, the petitioner has prayed for grant of a declaration that the action of the respondents not to implement G.O.Ms.No.345, Municipal Administration and Urban Development (H.2) Department, dated 30.06.2006 issued by Municipal Urban Development Department of Government of Andhra Pradesh is illegal and contrary to master plan modified by the said G.O. He has further prayed for issue of a mandamus to the respondents to implement G.O.Ms.No.345, dated 30.06.2006 and widen the roads as per the modified master plan of Vizianagaram Town.

The petitioner claims to be the owner of property bearing No.15-2-10, M.G.Road, Vizianagaram and is having business interest in Visakhapatnam. According to him, despite the modification of master plan for Vizianagaram Town, which envisages widening of roads up to 80 feet, respondent Nos.2 to 4 are widening the road up to 60 feet only.

We have heard Shri A.Narasimha Rao, learned counsel for the petitioner and Shri S.Nageshwara Reddy, learned counsel for Vizianagaram Municipality (for short, 'the Municipality') and perused the record.

In our opinion, the writ petition is liable to be dismissed only on the ground that the petitioner has not come to the Court with clean hands and is guilty of highly contumacious conduct of trying to mislead the Court by withholding relevant facts, which have direct bearing on the road widening programme undertaken by the Municipality.

A careful reading of the petitioner's affidavit gives an impression

that after issue of G.O.Ms.No.345, dated 30.06.2006 and publication of the revised master plan, which envisages 80 feet wide road in the Municipality, respondent No.2 has started work of widening the road up to the extent of 60 feet only. The impression sought to be conveyed by the petitioner is that with a view to help vested interests, the authorities of the Municipality are deliberately violating the norms prescribed under G.O.Ms.No.345, dated 30.06.2006.

In the counter-affidavit filed by Shri S.S.Varma, Commissioner of the Municipality, it has been categorically averred that road widening programme was started in the year 2004 in terms of G.O.Ms.No.400, Municipal Administration, dated 18.07.1989, which envisaged widening of the road by 60 feet. The deponent has further averred that road widening programme of M.G. Road from Three Lamps Junction to Clock Tower was undertaken and completed and the width of road is 66 feet. For the sake of reference, paragraphs 4 to 9 of the affidavit of

Shri S.S.Varma are reproduced below:

> "It is submitted that the Town Development Committee in the year 2003 was constituted under the Chairmanship of District Collector. The Municipality has initiated road widening urged by the public and public representatives as per zonal Development Plan approved in G.O.Ms.No.400, M.A., Dt: 18.07.89. The Town Development Committee has decided to widen 60'-0" instead of 66'-0" from 3 lamps to S.B.I. in three phases. As per instructions of the District Collector, the Municipality and R&B Department has taken up the road widening process in the year 2004, and first phase was completed from 3 lamps to Clock Tower to a width of 60'-0". Further the Municipality has initiated steps under APM Act 1965 under Sections 172 to 179 and Land Acquisition Rules, 1894 amended 1976 and as per further instructions of the District Collector notices issued to 80'-0" wide from Clock Tower to Kanyaka Parameswari Temple and Kanyaka

Parameswari Temple to State Bank of India. The Municipality has initiated steps as per A.P. Municipality Act, Land Acquisition Act and A.P. Urban Development Authority Act, 1975.

It is submitted that the Municipality has initiated steps for widening of road on priority basis, M.G. Road is an important road because Goddess Pydithallamma Ammavari temple is situated in the road and several type of businesses like cloth, grocery, shops, jewellery shops etc., and commercial banks are also established in the road since several years ago. But these establishments are not change this place. Vizianagarm is a District Head Quarters and fast growth town and the floating population is very high at Clock Tower, Three lamps, K.P. Temple and S.B.I. These are important core areas for traffic regularization and free flow of pedestrians moment the road widening is essential than other roads.

It is submitted that the issuance of G.O.Ms.No.345, dated 30.6.2006 is correct. And the other facts in that para is also correct. But the initiative for road widening in Vizianagaram Municipality is taken place in the year 2004. At the time the old master plan (Zonal Development Plan) vide G.O.Ms.No.400 MA dt.18.07.89 was in force. According to that the width of M.G. Road from 3 lamps to clock tower is 66 ft. But the then existing road width is irregular, varies from 40 ft to 50 ft. To widen the road without paying compensation and, which is financially burden to Municipality and considering the request of the house owners whose properties are lossessing, the then Town Development Committee resolved to widen that to 60 ft instead of 66 fts.

It is submitted that the Municipality and R&B Department has started the road widening process from the year 2004, at that time the M.G. Road was 66'-0". As per Zonal Development Plan vide G.O.Ms.No.400, M.A., Dt:18.07.89, the then District Collector and Town Development Committee decided to undertake Road widening in phase wise. The Phase-I is 3 lamps to Clock tower to a width of 60'-0" wide, as accepted by the residents of the road. They have voluntarily removed their structures and site left for road without any compensation. The decision of the Town Development of Committee to widen the road to 60 ft. was taken in a transparent way but not in partial

motive on 8.03.05 when the earlier Zonal Development Plan vide G.O.Ms.No.400 MA datd. 18.07.89 was in force. It is desired that no vested interests are there either to the Town Development Committee or the Municipality.

It is submitted that the vice Chairman Visakhapatnam Urban Development Authority has addressed a letter to the District Collector on 24.07.2006. But by that time the road widening process in M.G. Road was completed from 3 lamps to Clock Tower Junction.

It is submitted that the widening process started in the year 2004 when the earlier Zonal Development Plan vide G.O.Ms.No.400 MA dt. 18.07.89 the revised Modified master plan came into effect from 30.6.06. When the road widening process completely done in M.G. Road from 3 lamps to Clock Tower and also the process of constructing drainage in both sides is in progress. So the allegation of non-implementation of revised Zonal Development Plan does not true."

Copy of the counter filed on behalf of respondent No.2 was supplied to the counsel for the petitioner on 28.09.2006. As on today, a period of one month and fifteen days is elapsed, but the petitioner has not chosen to file rejoinder affidavit to controvert the averments contained therein. It is, thus, evident that the petitioner has deliberately omitted to project a correct picture about the road widening programme, which had been undertaken by respondent No.2 more than two years prior to the issue of G.O.Ms.No.345, dated 30.06.2006. If the petitioner has disclosed all the facts in a correct perspective, the Court would not have issued a notice requiring the respondents to explain their position in the matter of alleged non-implementation of G.O.Ms.No.345, dated 30.06.2006. By withholding the material facts which have bearing on the decision of the prayer made by him, the petitioner succeeded in misleading the Court to issue notice to the respondents and thereby compelled them to engage advocate and contest a wholly unnecessary litigation. It is, thus, clear that the

petitioner is guilty of not coming to the Court with clean hands and the writ petition filed by him is liable to be dismissed. Reference, in this connection, can appropriately be made to the following judgments:

Hari Narain v. Badri Das[1]**;**

Welcome Hotel and others v. State of Andhra Pradesh and others etc.[2]**;**

G.Narayanaswamy Reddy and others v. Governor of Karnataka and another[3]**;**

S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others[4]**,** and

Writ Appeal No.147 of 2006 – **Kasinath Rao Godse v. Municipal Council, Sangareddy** (decided on 22.03.2006).

In the result, the writ petition is dismissed. For not approaching the Court with clean hands, the petitioner is saddled with costs of Rs.10,000/-, which shall be paid to respondent No.2 within a period of one month from today.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 13.11.2006

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[1] AIR 1963 SC 1558

[2] AIR 1983 SC 1015

[3] AIR 1983 SC 1726

[4] JT 1993 (6) SC 331